

**CONTRACT AGREEMENT
FOR
LEWIS COUNTY
TRANSPORTATION PLANNING ASSISTANCE**

THIS AGREEMENT dated for reference purposes July 1, 2015, is entered into by and between the Cowlitz-Wahkiakum Council of Governments, a municipal corporation (hereinafter referred to as “COG”), and **LEWIS COUNTY**, a municipal corporation of Washington State (hereinafter “Agency”), collectively the “Parties” and individually the “Party.”

RECITALS

WHEREAS, COG is a regional planning agency organized under RCW 36.64.080 to serve general and special purpose governments in the Cowlitz-Wahkiakum region; and

WHEREAS, the general purpose governments of Cowlitz, Grays Harbor, Lewis, Pacific and Wahkiakum Counties have formed, through an Interlocal Agreement effective December 1, 1990, as amended March 14, 1992, the Southwest Washington Regional Transportation Planning Organization pursuant to RCW 36.70A; and

WHEREAS, the COG and Agency are signatories to that Interlocal Agreement; and

WHEREAS, the Interlocal Agreement mentioned above designates the COG, then known as the Cowlitz-Wahkiakum Governmental Conference, as the lead planning agency, and that the COG shall coordinate development of the regional transportation plan with the Agency; and

WHEREAS, the Washington State Department of Transportation’s appropriation for the Southwest Washington Regional Transportation Planning Organization (SWRTPO) shall be distributed annually to the COG as the lead planning agency, who shall then distribute an identified share to the Agency, less an amount agreed to for fiscal and program management activities, for the performance of regional transportation planning activities for and in Lewis County as outlined in the Scope of Services.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

- 1.1 The Agency agrees to perform and complete the work as described in Exhibit A – Scope of Work (hereinafter referred to as “work”), attached hereto and by this reference made a part of this Agreement.
- 1.2 The COG agrees to reimburse the Agency for the work as provided in Section 3 of this Agreement and as defined in Exhibit B – Compensation Rate, attached hereto and by this reference made a part of this Agreement.
- 1.3 This contract incorporates in its entirety Agreement No. GCB 1764, between the Washington State Department of Transportation and the Cowlitz-Wahkiakum Council of Governments which is attached hereto as Exhibit C and made a part of this agreement. This agreement recognizes the SWRTPO and how it is to be administered. The Agency agrees to adhere to all terms and conditions of the above-referenced agreement, except as modified by this contract.

2. COG and AGENCY RESPONSIBILITIES

2.1 COG RESPONSIBILITIES

- 2.1.1 The COG shall coordinate the five (5) county Regional Transportation Planning Organization (RTPO) and those projects identified in the Unified Planning Work Program (UPWP) for this fiscal period.
- 2.1.2 The COG will be responsible for administering all federal, state and local funds allocated to the five (5) county RTPO from the State of Washington.
- 2.1.3 The COG will notify the Agency of required duties as part of the RTPO in a timely manner allowing for sufficient time to respond.

2.2 AGENCY RESPONSIBILITIES

- 2.2.1 The Agency shall confer and coordinate with the COG on a regular basis.
- 2.2.2 The Agency shall prepare and present written monthly progress reports throughout the course of the work program's fiscal year in accordance with the WSDOT reporting requirements. A report shall always accompany a reimbursement request when made.
- 2.2.3 At the conclusion of the fiscal year 2015, the Agency shall prepare and submit to the COG a final progress report in a format determined by the COG as prescribed in Exhibit A – Scope of Work, Anticipated Deliverables 7.0.
- 2.2.4 As part of the annual Scope of Work for the region, the five (5) Counties in turn host the annual meeting of the Southwest Washington RTPO. In the year that the Agency is assigned to host, it is responsible to provide the meeting room, refreshments and other necessary elements in support of the annual meeting; however, any and all costs related to the annual meeting are not considered part of this contract and may be submitted to the COG for reimbursement in full above and beyond the total amount of this agreement.

3. PAYMENT

- 3.1 The COG, in consideration of the faithful performance of the services to be provided by the Agency as described in Exhibit A – Scope of Work, agrees to reimburse the Agency for actual direct and related indirect costs of the work to a not-to-exceed maximum amount of \$25,000, as established in this Agreement.
- 3.2 The compensation rate for services to be provided by COG is marked Exhibit B – Compensation Rates, and is attached hereto and by this reference made a part of this Agreement.
- 3.3 The Agency shall request reimbursement of funds as they are expended on work program activities. Such requests for reimbursement shall document the amount of the funds expended during the work program fiscal year, as well as for the current billing period, and shall include reports identified in Exhibit A, below.
- 3.4 To ensure payment, the Agency shall either email or mail via United States Postal Service invoices and appropriate supporting materials to:

CWCOG / Administration Annex
207 4th Avenue North
Kelso, WA 98626 OR akisamore@cwco.org

- 3.5 The Agency's requests must be made at least quarterly, with not more than one request every month. Requests for reimbursement received by the COG by the 5th of the month will be paid at the end of that month. Requests received after the 5th of the month will be processed for payment the following month.

- 3.6 If there is a change in scope of work to be performed by the Agency that results in an increase in costs in excess of the maximum amount allowed under section 3.1 herein, the Parties shall enter into an amendment to this Agreement to document the change in scope and to increase the maximum amount reimbursable under this Agreement.
- 3.7 Agency agrees to submit a final invoice to COG within sixty (60) calendar days after COG has completed the work. At the time of final billing, all necessary adjustments will be made and reflected in the final payment. In the event that such final review or audit reveals overpayment to Agency or under billings to COG, the Agency agrees to refund any overpayment to the COG within thirty (30) calendar days after receipt of an invoice from COG and COG agrees to reimburse the under-billed amount to the Agency within thirty (30) calendar days after Agency's receipt of an invoice.

4. ACKNOWLEDGEMENT OF STATE/FEDERAL FUNDING

In the event funding from the state or federal sources is withdrawn, reduced or limited in any way after the effective date of this contract, and prior to normal completion, the COG may terminate or renegotiate this agreement subject to the new funding limitations and/or conditions.

5. AMENDMENT

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and understandings, agreements, representations not contained in this Agreement shall not be binding on either Party. Either Party may request changes to the provisions of this Agreement. Such changes that are mutually agreed upon shall be incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

6. TERM / TERMINATION

- 6.1 The term of this Agreement shall begin July 1, 2015, and terminate June 30, 2016, or earlier if agreed to in writing by the Parties, except as set forth below in this section. The term of this Agreement may be modified and continued by amendment for work beyond this date at the discretion of the Parties and as funding allows.
- 6.2 Either Party may terminate this Agreement at any time in the event the other Party fails to perform a material obligation of this Agreement or fails to perform any of the requirements of this Agreement, including, but not limited to, if either Party fails to make reasonable progress on the work or other violation of this Agreement that endangers substantial performance of the work. The Parties shall serve written notice of a Party's intent to terminate this Agreement setting forth in detail the reasons for such termination. The Party receiving such notice of intent to terminate shall be given the opportunity to remedy the default within fifteen (15) calendar days of receipt of such notice. If the default is not cured within the designated time period, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.
- 6.3 Either Party may terminate this Agreement for convenience and without cause upon two (2) weeks written notice to the other Party. The Agency shall pay in full for all services provided up to the date of termination of this Agreement as funding allows.

7. PARTY CONTACTS

All contact between the Parties, including, but not limited to, Agreement administration, will be between the representatives of each Party or their designee as follows:

COG	AGENCY
William A. Fashing, Executive Director bfashing@cwccog.org Financial/Contract Amendments Designee: Anisa Kisamore, Office Administrator akisamore@cwccog.org	Edna Fund, Chair edna.fund@lewiscountywa.gov
207 – 4 th Avenue North/Admin Annex Kelso, WA 98626	Lewis County Board of County Commissioners 351 NW North Street Chehalis, WA 98532
Telephone: (360) 577-3041 Facsimile: (855) 710-6381	Telephone: (360) 740-1120 Facsimile: (360) 740-1475

8. NOTIFICATION

Any notice required pursuant to this Agreement shall be in writing and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the individual(s) identified in Section 7 herein unless otherwise indicated in writing by the Parties to the Agreement.

9. INDEMNIFICATION

9.1 Each Party to this Agreement shall protect, defend, indemnify, and hold harmless the other Party, its officers, employees, and agents, while acting within the scope of their employment as such, from any and all costs (including reasonable attorneys' fees and costs), claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the Party's own negligent acts or omissions with respect to the provisions of this Agreement. No party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligent acts or omission. Each Party waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the other Party and its agencies, officials, agents or employees.

9.2 The indemnification obligation described in this section shall survive the termination of this Agreement.

10. DISPUTES

The designated representatives herein under Section 7 of this Agreement shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, the Parties shall agree upon a third party to provide non-binding mediation of the issue prior to institution of litigation. Each Party shall bear its own costs and one-half of the cost of the third party mediator.

11. VENUE

This Agreement shall be deemed to be made in the County of Cowlitz, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of

Washington. All legal actions in connection with this Agreement shall be brought in the superior court situated in the County of Cowlitz, State of Washington.

12. ATTORNEY FEES and COSTS

In the event a suit, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, and shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

13. SEVERABILITY

If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder shall not be affected.

14. ASSIGNMENT

Neither this Agreement nor any interest therein may be assigned by either Party without first obtaining the written consent of the other Party.

15. NONDISCRIMINATION

No person shall, on the grounds of race, creed, color, national origin, age, sex, sexual orientation or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under activities performed pursuant to this Agreement.

16. RECORD RETENTION and AUDIT

During the progress of the work and for a period of not less than six (6) years from the date of final payment to COG, the records and accounts pertaining to the services under this Agreement and accounting thereof shall be kept available for inspection and audit by the Parties, City, State and/or Federal Government, and copies of all records, accounts, documents, or other data pertaining to this Agreement will be furnished upon request. The Parties shall have full access to and right to examine and copy said records during normal business hours and as often as it deems necessary. The Parties agree that the services performed herein are subject to audit by either or both Parties.

17. COPYRIGHTS

Copyright of all material created by COG and paid for with funds as a part of this Agreement shall be deemed the property of the Agency authored by COG. Either Party may use the material and permit others to use such for any purpose consistent with the Party's respective mission. This material includes, but is not limited to, documents, reports, books, videos, pamphlets, sound reproductions, photographs, studies, surveys, tapes, and training material. Materials used to perform the services and create the deliverables of this Agreement that are not created for or paid for through this Agreement shall be owned by such party as determined by law. The legal owner thereof hereby grants a perpetual, unrestricted, royalty free, non-exclusive license to the other party to use and to permit others to use for any purpose consistent with the respective mission of said material.

18. AUTHORIZED SIGNATURES

The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

19. COUNTERPARTS

This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts shall constitute one agreement.

IN WITNESS HEREOF, the Parties have subscribed their names hereto effective as of the year and date first written above.

**COWLITZ-WAHKIAKUM
COUNCIL OF GOVERNMENTS**

By William A. Fashing
William A. Fashing, Executive Director

Date: 6-11-15

ATTEST

By _____
Anisa Kisamore, Office Administrator

Date: _____

**LEWIS COUNTY
BOARD OF COUNTY COMMISSIONERS**

By _____
Edna Fund, Chair

Date: _____

ATTEST

By _____
Karri Muir, CMC, Clerk of the Board of
County Commissioners

Date: _____

APPROVED AS TO FORM

By: _____
Agency Attorney

Date: _____



**SCOPE OF WORK
FOR
LEWIS COUNTY
TRANSPORTATION PLANNING ASSISTANCE**

This Scope of Work described herein are the transportation planning projects to be performed by Lewis County for the Southwest Washington Regional Transportation Planning Organization (SWRTPO or RTPO), Fiscal Year 2016 (July 1, 2015 – June 30, 2016 Program year).

The purpose is to coordinate with the Cowlitz-Wahkiakum Council of Governments in maintaining a regional forum for discussion of transportation issues of regional significance and to develop a Regional Transportation Plan for the five-county SWRTPO, with Lewis County being responsible for the Lewis County region of the SWRTPO.

WORK TASKS

1.0 Coordination

Outreach activities that seek involvement of county agencies, community groups, and the public in regional and local transportation planning, through workshops and meetings in support of the local and regional transportation planning process.

- 1.1 Facilitate Technical Advisory Committee meetings.
- 1.2 Facilitate Transportation Strategy Council meetings.
- 1.3 Perform liaison activities, as needed, between local, state, and federal agencies, along with tribal government and local transportation stakeholder groups.
- 1.4 Ongoing coordination with the county, cities and town, ports, airports, transit, tribe, community groups (bike/ped & scenic byway), rail, freight, and other transportation stakeholders.

2.0 Staffing that provides support and maintenance for the Lewis County Transportation Strategy Council, Technical Advisory Committee, and other committees as needed.

- 2.1 Participation in local, regional, state, and federal planning processes.
- 2.2 Attendance of Technical Advisory Committee, Transportation Strategy Council, and WSDOT coordinating and planning meetings.
- 2.3 Continued support of the White Pass Scenic Byway group by attendance of quarterly meetings and providing technical advice.
- 2.4 Research and provide information, such as: GIS mapping and transportation data, to member agencies concerning planning and development of transportation infrastructure.
- 2.5 Participation in CWCOG/SWRTPO meetings or committees, as needed.

3.0 Administration

RTPO administration and maintenance and support of the planning process; continue the exchange of information with CWCOG/SWRTPO and local agencies in order to develop transportation priorities that identify both short and long-range needs, and fulfill the planning and reporting requirements of the SWRTPO.

- 3.1 Provide input into federal and state transportation planning processes.
- 3.2 Support the development of both the short-range (6-year) Comprehensive Transportation Program for the County, area cities, ports, transit agencies and Tribal governments and long-range (20-year) regional transportation plans of the SWRTPO.

- 3.3 Develop county section of the Unified Planning Work Program containing RTPO elements.
- 3.4 Work with RTPO staff to administer RTPO programs, prepare annual budgets and contracts, and submit quarterly and annual reports.
- 3.5 Provide county staff support to complete the Title VI Non-Discrimination Annual Report.
- 3.6 Facilitate and host Human Services Transportation Plan meetings.
- 3.7 Provide local liaison support for updates of governance documents and processes.

4.0 **Planning**

- 4.1 Provide technical assistance to member agencies and transportation stakeholders developing and funding transportation projects.
- 4.2 Provide support to member jurisdictions on RTIP processes, TIP amendments, SAW database and related matters.
- 4.3 Administer Surface Transportation Program (STP) funding for Lewis County.
- 4.4 Work with member agencies to insure WSDOT STP obligation targets are met for the county.
- 4.5 Prioritize STP transportation projects based on the adopted regional transportation priorities of: Preservation, Safety, Mobility, and Multimodal.
- 4.6 Prepare draft of county element for the regional transportation update.

ANTICIPATED DELIVERABLE(S)

1.0	Lewis County element of the <i>Five-County Regional Transportation Plan</i>	TBD
2.0	Lewis County draft element of the <i>Five-County Transportation Improvement Program (TIP)</i>	June 30, 2016
3.0	Administration of Lewis County Region STP process in compliance with MAP-21 and regional plan priorities, including development of new Act policies and procedures	On-going
4.0	Monthly activity reports	Each month prior to the 5th
5.0	Brochures, fact sheets and data related to transportation infrastructure needs in Lewis	On-going
6.0	Lewis County element of the FY2015 <i>Unified Planning Work Program (UPWP)</i>	April 1, 2016
7.0	Information for Lewis County projects and activities for inclusion in the FY 2016 UPWP Annual Report	July 15, 2016 <i>CFR 420.117(b)(1)</i>

**COMPENSATION RATES
FOR
LEWIS COUNTY
TRANSPORTATION PLANNING ASSISTANCE**

The following rates are applicable to the 2015-2016 grant fiscal year.

Rate

For the purpose of this agreement, all allowable costs associated with the work program tasks as prescribed in Exhibit A may be submitted for reimbursement up to but not to exceed \$25,000 unless otherwise mutually agreed to and amended to this contract as prescribed in section 5 of the contract.

Exhibit C